

Introduced by Senators Dunn and Ducheny
(Principal coauthor: Senator Hollingsworth)
(Principal coauthor: Assembly Member Steinberg)
(Coauthors: Senators Burton and Florez)

February 21, 2003

An act to add Sections 65585.3 and 65585.4 to the Government Code, relating to planning.

LEGISLATIVE COUNSEL'S DIGEST

SB 744, as introduced, Dunn. Planning: housing.

Existing law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. One part of the housing element is an assessment of housing needs and inventory of resources and constraints relevant to meeting these needs. The assessment includes the locality's share of regional housing needs which is determined by the appropriate council of governments, subject to revision by the Department of Housing.

This bill would provide that a city, county, or city and county that has met at least 10% of its housing needs for each of the very low, low-, and moderate-income categories during the preceding year or 30% over the preceding 3 years shall receive priority eligibility in the award of competitive state grants or loans for planning, infrastructure, commercial or industrial development, or other economic development.

This bill would also establish with the department a Housing Accountability Committee consisting of 5 members, appointed as specified, to hear appeals of city, county, or city and county decisions

on applications for the construction of housing developments that meet specified affordability requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65585.3 is added to the Government
2 Code, to read:

3 65585.3. (a) A city, county, or city and county that has met at
4 least 10 percent of its housing need for each of the very low, low-,
5 and moderate-income categories, as determined pursuant to
6 Section 65584, during the preceding year or 30 percent of its
7 housing need in each of the very low, low-, and moderate-income
8 categories over the preceding three years shall receive priority
9 eligibility in the award of competitive state grants or loans for
10 planning, infrastructure, commercial or industrial development, or
11 other economic development activities. To be eligible for the
12 priority, the city, county, or city and county shall conclusively
13 demonstrate to the department that it has achieved the required
14 percentages in accordance with the forms and definitions
15 determined by the department pursuant to Section 65400.

16 (b) As used in this article, “competitive grant or loan” means
17 any discretionary award of money by a state agency, department,
18 board, or commission that is funded with money from the state
19 General Fund, federal funds, or, except where specifically
20 inconsistent with the applicable bond act, a state bond approved
21 after January 1, 2004.

22 (c) For purposes of this section, “infrastructure” includes all
23 of the following:

24 (1) Land, improvements, and equipment for highways, streets,
25 roads, and public transportation and transit.

26 (2) Facilities for the collection, transmission, treatment, and
27 disposal of sewage.

28 (3) Facilities for the treatment, transmission, and distribution
29 of nonagricultural water.

30 (4) Facilities for the diversion, collection, storage, and disposal
31 of flood or storm water.

32 (5) Open-space land, parkland, and related improvements.



1 (6) Libraries, museums, performing arts centers, zoos, and
2 other public facilities.

3 (7) Telecommunications and technology improvements.

4 (8) Power generation and distribution systems.

5 SEC. 2. Section 65585.4 is added to the Government Code, to
6 read:

7 65585.4. (a) There shall be within the department a Housing
8 Accountability Committee consisting of five members. The
9 director of the department and the Director of the Governor's
10 Office of Planning and Research shall be exofficio members,
11 except that either may designate an employee of his or her
12 respective department or office to serve on the committee. The
13 remaining three members shall be appointed by the Governor with
14 the advice and consent of the Senate. One member shall be a
15 member of a city council or board of supervisors, and one member
16 shall have extensive experience in the development of affordable
17 housing. The appointed members shall serve for terms of two years
18 each, and the director shall designate the chairperson. A member
19 of the committee shall receive no compensation for his or her
20 services, but shall be reimbursed by the department for all
21 reasonable expenses actually or necessarily incurred in the
22 performance of his or her official duties. The committee shall hear
23 appeals pursuant to this section at least quarterly or more often as
24 necessary. The committee shall conduct the hearings in
25 accordance with rules and regulations established by the
26 department. The department shall provide the space and clerical
27 and other assistance that the committee may require.

28 (b) Any applicant who proposes to construct a housing
29 development that meets the criteria of subdivision (c) and whose
30 application is either denied or approved with conditions that in his
31 or her judgment render the provision of housing infeasible, may
32 appeal the decision of the city, county, or city and county to the
33 housing accountability committee.

34 (c) An applicant may file an appeal with the committee if both
35 of the following criteria are met:

36 (1) The proposed housing development will meet any of the
37 following affordability requirements:

38 (A) Ten percent of the total units of the housing development
39 are available at affordable housing cost to very low income

1 households, as defined in Section 50105 of the Health and Safety
2 Code.

3 (B) Twenty percent of the total units of the development are
4 available at affordable housing cost to lower income households,
5 as defined in Section 50079.5 of the Health and Safety Code.

6 (C) Fifty percent of the total units of the development are
7 available at affordable housing cost to moderate-income
8 households, consistent with Section 50052.5 of the Health and
9 Safety Code.

10 (2) Either of the following criteria is met as of the date on which
11 the application to the city, county, or city and county is deemed
12 complete:

13 (A) The city, county, or city and county has adopted a housing
14 element that the department has determined pursuant to Section
15 65585 to be in substantial compliance with the requirements of this
16 article, and the proposed housing development, exclusive of any
17 density bonus granted pursuant to Section 65915, is consistent
18 with both the density allowed by the jurisdiction's zoning
19 ordinance and the general plan land use designation as specified
20 in any element of the general plan, provided that consistency shall
21 not be required with the zoning ordinance or land use designation
22 if the jurisdiction has not amended the ordinance or the designation
23 to conform to the adopted housing element.

24 (B) The city, county, or city and county has not adopted a
25 housing element that the department has determined pursuant to
26 Section 65585 to be in substantial compliance with the
27 requirements of this article, and the proposed housing
28 development, exclusive of any density bonus granted pursuant to
29 Section 65915, is consistent with the jurisdiction's general plan
30 land use designation as specified in any element of the general
31 plan.

32 (d) An applicant may file an appeal with the committee within
33 20 days after the date of the decision by the local agency to deny
34 the application or approve the application with conditions that
35 render the provision of housing infeasible. The committee shall
36 notify the local agency of the filing of such an appeal within 10
37 days, and the local agency shall, within 10 days of the receipt of
38 such notice, transmit a copy of its decision and the reasons therefor
39 to the committee. The appeal shall be heard within 30 days after
40 receipt of the request for an appeal by the applicant. The appeal



1 hearing may be conducted by the board, a subcommittee of one or
2 more members of the board, or a hearing officer appointed by the
3 chair of the board. A stenographic record of the proceedings shall
4 be kept. At its next fall meeting, the committee shall render a
5 written decision, based upon a majority vote, stating its findings
6 of fact, its conclusions and the reasons therefore. The hearing by
7 the housing accountability committee shall be limited to the issue
8 of whether, in the case of the denial of an application, the decision
9 of the city, county, or city and county was reasonable and
10 consistent with meeting local housing needs as determined
11 pursuant to Section 65584 and, in the case of an approval of an
12 application with conditions and requirements imposed, whether
13 such conditions and requirements render the provision of housing
14 infeasible and whether they are consistent with meeting local
15 housing needs as determined pursuant to Section 65584. If the
16 committee finds, in the case of a denial, that the decision of the
17 local agency was unreasonable and not consistent with meeting
18 local housing needs, it shall vacate such decision and shall direct
19 the local agency to issue any necessary approval or permit to the
20 applicant. If the committee finds, in the case of an approval with
21 conditions and requirements imposed, that the decision of the
22 board renders the provision of housing infeasible and is not
23 consistent with meeting local housing needs, it shall order the local
24 agency to modify or remove any such condition or requirement so
25 as to make the project no longer infeasible and to issue any
26 necessary permit or approval. Decisions or conditions and
27 requirements imposed by a local agency that are consistent with
28 meeting local housing needs shall not be vacated, modified, or
29 removed by the committee notwithstanding that such decisions or
30 conditions and requirements have the effect of rendering the
31 provision of housing infeasible.

32 (f) In any appeal before the committee, the applicant shall have
33 the initial burden of proof to show that it has met the requirements
34 of subdivision (c). In a case of approval with conditions or
35 requirements imposed, the applicant shall also have the burden of
36 proof to show that the conditions and requirements render the
37 provision of housing infeasible. If the applicant meets the initial
38 burden of proof, then the city, county, or city and county shall have
39 the burden of proof to show that its action was reasonable in that
40 denial of the project or the failure to implement the conditions and



1 requirements, as proposed, would have a specific, adverse impact
2 upon the public health or safety or the physical environment, as
3 defined in Section 65589.5, or on any real property that is listed
4 in the California Register of Historical Resources, that there is no
5 feasible method to satisfactorily mitigate or avoid the specific
6 adverse impact without rendering the project infeasible, and that
7 the mitigation or avoidance of such impacts outweigh local
8 housing needs. The committee's decision must be consistent with
9 the California Environmental Quality Act (Division 13 of the
10 Public Resources Code) and any mitigations adopted as a result of
11 the environmental review required by that act.

12 (g) The housing accountability committee or the applicant shall
13 have the power to enforce the orders of the committee at law or in
14 equity in the superior court. The city, county, or city and county
15 shall carry out the order of the housing accountability committee
16 within 30 days of its entry and, upon failure to do so, the order of
17 the committee shall for all purposes, be deemed to be the action of
18 the local agency, unless the applicant consents to a different
19 decision or order by the local agency.

20 (h) The department may charge a fee to cover actual costs
21 directly related to the activities of the Housing Accountability
22 Committee. If the committee sustains the original decision of the
23 city, county, or city and county, the fee shall be charged to the
24 applicant. If the committee orders approval of the proposed
25 development or modifies or removes and conditions or
26 requirements imposed upon the applicant, the fee shall be charged
27 to the city, county, or city and county.

